

ASSEMBLY BILL

No. 2138

Introduced by Assembly Member Chesbro

February 18, 2010

An act to add Chapter 6.6 (commencing with Section 42395) to Part 3 of Division 30 of the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as introduced, Chesbro. Recycling: food service packaging: carryout bags.

The California Integrated Waste Management Act of 1989, which is administered by the Department of Resources Recycling and Recovery requires every rigid plastic packaging container, as defined, sold or offered for sale in this state, to generally meet one of specified criteria. Existing law requires the operator of a store to establish an at-store recycling program for plastic carryout bags, until January 1, 2013.

This bill would enact the Plastic Ocean Pollution Reduction, Recycling, and Composting Act and would prohibit a food provider, after an unspecified date, but not after July 1, 2013, from distributing a disposable food service packaging or a single-use carryout bag, as defined, unless the packaging or bag meet the criteria for either compostable packaging or recyclable packaging. The bill would prohibit a food provider, on and after July 1, 2013, from distributing a disposable food service packaging or a single-use carryout bag to a consumer, unless the department determines the packaging or bag meet a specified composting or recycling rate. The department would be required to adopt regulations to implement these requirements.

This bill would provide for the imposition of a civil penalty upon a person violating these requirements and would require the penalties to

be deposited into the Ocean Pollution Reduction Account, which the bill would create in the Integrated Waste Management Fund in the State Treasury. The bill would authorize the department to expend the moneys deposited in the account, upon appropriation by the Legislature, to provide public education and assist local governmental agencies in efforts to reduce plastic waste and marine debris, and for the board's costs of implementing the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Plastic and packaging waste represents a significant and
4 fast-growing component of the state's waste stream. California
5 disposes of more than three million tons of plastic packaging waste
6 annually. Plastic is the fastest growing component of generated
7 waste, increasing from less than 5 percent in 1980 to more than
8 12 percent in 2008.

9 (b) With the sole exception of plastic beverage containers
10 covered by the California Beverage Container Recycling and Litter
11 Reduction Act, little of generated plastic is currently recycled.
12 Excluding beverage containers, less than 5 percent of plastic
13 packaging is currently recycled.

14 (c) Plastic, including, but not limited to polystyrene, disposable
15 food service packaging, and single-use bag litter, and the resulting
16 ocean pollution, present more than an aesthetic problem, as this
17 pollution poses a danger to marine organisms through ingestion
18 and entanglement.

19 (d) This plastic litter and ocean pollution present a serious and
20 growing threat to water quality, the beneficial uses of the waters
21 of the state, and recreational human use, as well as threatening the
22 ability of California's waters and the Pacific Ocean to sustain
23 aquatic life.

24 (e) Upwards of 80 percent of ocean pollution originates from
25 land-based human activities including littering and waste disposal
26 practices. Each year thousands of Californians volunteer countless
27 hours to clean up plastic and disposable food service packaging,

1 and single-use bag litter from public roadways, beaches, parks,
2 and other areas of the state.

3 (f) California's aquatic and marine environments are
4 increasingly threatened by the amount of plastic, disposable food
5 service packaging, and single-use bags that are carried by storm
6 water runoff.

7 (g) Under a consent decree, a total maximum daily load (TMDL)
8 for trash is required to be developed for all impaired waters within
9 the state within the next decade. The TMDL for the Los Angeles
10 River and Ballona Creek Watershed require that the amount of
11 trash be reduced to zero to protect beneficial uses.

12 (h) The costs to state agencies and local governments to comply
13 with existing TMDL requirements, pending TMDL requirements,
14 or the TMDL requirements yet to be developed, will run into the
15 billions of dollars.

16 (i) Data collected during California's annual Coastal Cleanup
17 and the 1999 Pilot Litter Study by the Department of Conservation
18 indicate that plastic, disposable food service packaging, and
19 single-use bags, represent some of the most commonly littered
20 items.

21 (j) Disposable food service packaging is used "on the go" when
22 access to trash and recycling receptacles is most limited.

23 (k) Plastics generally can become inadvertent litter even if
24 initially properly discarded, and are carried by wind from
25 uncovered trash cans and dumpsters, vehicles, and solid waste
26 facilities, including landfills.

27 (l) The benefits of reducing, recycling and composting plastics,
28 disposable food service packaging, and single-use bags, will have
29 a direct positive impact on the California economy.

30 (m) A 2005 study for the former Natural Resources Agency
31 concluded that ocean-dependent industries add forty-two billion
32 nine hundred million dollars (\$42,900,000,000) and 408,000 jobs
33 to California's economy.

34 (n) Compounding the problem of plastic packaging and waste,
35 this material is nonbiodegradable, and litter prone, since, even
36 when properly disposed, lightweight plastic packaging and
37 single-use bags can be blown from trash cans, garbage trucks, and
38 landfills.

39 (o) Nonbiodegradable plastic litter poses a real and growing
40 threat to water quality and the marine environment.

SEC. 2. Chapter 6.6 (commencing with Section 42395) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 6.6. PLASTIC OCEAN POLLUTION REDUCTION,
RECYCLING, AND COMPOSTING ACT

Article 1. General Provisions

42395. This chapter shall be known, and may be cited, as the Plastic Ocean Pollution Reduction, Recycling, and Composting Act.

42395.1. It is the intent of the Legislature, consistent with recommendations in the Ocean Protection Council report “Eliminating Land-based Discharges of Marine Debris in California,” to designate responsibility and authority for reduction of marine debris, plastic ocean pollution, and its sources to a state agency.

Article 2. Definitions

42395.2. For the purposes of this chapter the following terms have the following meanings, unless the context clearly requires otherwise:

(a) “Compostable packaging” means a material that meets any of the following criteria:

(1) The packaging is accepted back for composting by the food provider.

(2) The packaging is accepted for composting in a residential collection program available to at least 75 percent of the households in the jurisdiction in which it is distributed, as determined pursuant to the regulations adopted by the department.

(3) The packaging is made of a material that meets the American Society for Testing and Materials (ASTM) standard specification for Compostable Plastics D6400, as published in September 2004. For purposes of this paragraph, an ASTM standard specification does not include an ASTM Standard Guide, a Standard Practice, or a Standard Test Method.

(4) The packaging is recovered for composting at a rate of 25 percent or more, as determined pursuant to the regulations adopted by the department.

(b) "Department" means the Department of Resources Recycling and Recovery.

(c) (1) "Disposable food service packaging" means single-use disposable products used by a food provider for serving or transporting prepared and ready-to-consume food or beverages.

(2) "Disposable food service packaging" includes, but is not limited to, plates, cups, bowls, trays, and hinged or lidded containers.

(3) "Disposable food service packaging" does not include such single-use disposable items as straws, cup lids, or utensils, or single-use disposable packaging for unprepared foods.

(d) "Food provider" means an establishment that provides prepared food for public consumption on or off its premises and includes, but is not limited to, a store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, catering truck, or vehicle.

(e) (1) "Prepared food" means ready to consume food or beverage prepared on the food provider's premises, using a cooking or food preparation technique.

(2) "Prepared food" does not include raw uncooked meat, fish, or eggs, unless the item is provided for consumption without further food preparation.

(f) "Recyclable packaging" means a material that meets any of the following criteria:

(1) The packaging is accepted back for recycling by the food provider.

(2) The packaging is accepted for recycling in a residential collection program available to at least 75 percent of the households in the jurisdiction in which it is distributed, as determined pursuant to regulations adopted by the department.

(3) The packaging is recovered for recycling at a rate of 25 percent or more, as determined pursuant to regulations adopted by the department.

(g) "Single-use carryout bag" means a carryout bag provided by a store to a customer at the point of sale.

Article 3. Packaging Waste Reduction and Recycling Responsibilities

42395.5. (a) On and after ____, until July 1, 2013, a food provider shall not distribute a disposable food service packaging

1 or a single-use carryout bag to a consumer, unless the disposable
2 food service packaging or single-use carryout bag meet the criteria
3 for either compostable packaging or recyclable packaging.

4 (b) On and after July 1, 2013, a food provider shall not distribute
5 a disposable food service packaging or a single-use carryout bag
6 to a consumer, unless the department determines the disposable
7 food service packaging or single-use carryout bag is recovered for
8 composting or recovered for recycling at a rate of 25 percent or
9 more.

10 42395.6. The department shall adopt regulations for purposes
11 of implementing this chapter, including determining recycling and
12 composting rates.

13 14 Article 4. Fines and Penalties 15

16 42395.7. (a) A person violating this chapter is subject to a
17 civil penalty of not more than one hundred dollars (\$100) for each
18 day the person is in violation of this chapter.

19 (b) The total annual penalties assessed upon a violator of this
20 chapter shall not exceed ten thousand dollars (\$10,000).

21 (c) On or before____, and on or before July 1 annually
22 thereafter, the department shall annually publish a list setting forth
23 any penalties that have been levied against a person who was in
24 violation of this chapter in the preceding calendar year.

25 (d) The department shall deposit all penalties or fines paid
26 pursuant to this section into the Ocean Pollution Reduction
27 Account, which is hereby created in the Integrated Waste
28 Management Fund in the State Treasury. The moneys deposited
29 in the Ocean Pollution Reduction Account may be expended by
30 the department, upon appropriation by the Legislature, to provide
31 public education and assist local governmental agencies in efforts
32 to reduce plastic waste and marine debris, and for the department's
33 costs of implementing this chapter.